REMARKS

The Non-Final Office Action, mailed December 26, 2007, considered and rejected claims 2-17, 23-40 and 42-44. [1]

By this paper, claims 15-17 and 42-44 have been amended.[2] Accordingly, claims 2-20, 22-40 and 42-44 remain pending, of which claims 17 and 25 are the only independent claims at issue.

As previously discussed the claims are generally directed to embodiments for testing software wherein at least two different verification levels are provided for testing the software and wherein selection of a first verification level causes testing and which includes invoking an insert record object to determine if the invocation of the insert record object results in a system crash and while refraining from producing any recorded output, and wherein selection of a second verification level (which is distinguished from the first verification level) causes testing by invoking an insert record object and verification through recorded output (which was not generated in response to the first verification level) that a record corresponding to the insert record object was properly inserted and present.

It will be noted that the only pending independent claims at issue, claims 17 & 25, were rejected under §103 in view of *Johnson* and APA.

Johnson discloses a testing system in which numerous text cases are run against various system configurations to generate a testing matrix. *Johnson* fails to disclose or suggest any embodiment, as claimed, however, in which different verification levels correspond to different tests and wherein selection of a first verification level causes testing "while refraining from producing any recorded output," but while selection of the second verification level does include producing recorded output to verify that an insert record object was properly inserted and presented. By way of example, the first verification level can simply see if the system crashes, while the second verification level produces recorded output to verify that the insert record object was inserted properly. The recorded output can be particularly helpful, for example, when

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[1] Claims 13-17, 25, 39 and 44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson et al. (2004/0073890 A1, hereinafter "Johnson") in view of purported admitted prior art (APA) found in paragraph [0007] of Applicants' Specification. Claims 2-12 and 23-24, 18-20, 26-38, 40 and 42-44 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Johnson in view of the purported admitted prior art (APA) of paragraph [0007] and in further view of Ruffolo et al. (2003/0196190 A1, hereinafter "Ruffolo").

[2] Support for the amendments includes the disclosure found in paragraphs 25, 30, and particularly as contrasted with the Background section of the Application, as discussed during the interview.

considering embodiments, such as those recited in claims 42 and 43, wherein it is determined that the record was only inserted a single time and/or without overwriting another record.

It is acknowledged by the Office that *Johnson* fails to disclose that

> selection of the first verification level causes the one or more test cases to be run during testing and which includes invoking an insert record object to determine if the invocation of the insert record object results in a system crash and while refraining from producing any recorded output, and wherein selection of the second verification level causes the one or more test cases to invoke an insert record object and to additionally verify through recorded output that a record corresponding to the insert record object was properly inserted and present. (Page 6, Office Action dated December 26, 2007)

In an attempt to compensate for the failings of *Johnson*, the Examiner asserts that APA teaches that a "stress test simply ignores any testing output if [the] system doesn't crash when the insert record object is run." However, this implies that output was produced and recorded. It is also noted that the use of the term "produced" implies recorded or the production of "recorded output", when read in context and particularly when contrasted with the disclosure in paragraph [0025]. Accordingly, all APA acknowledges is that existing stress test cases produce recorded output. There is no disclosure of any stress test case that does not produce recorded output and particularly in the selectively tunable manner as claimed. In particular, there is nothing to suggest that selection of a first verification level will result in no production of recorded output that is produced by the selection of a second verification level, as claimed.

It is also noted that the rejection of record fails to provide any suggestion or motivation as to why recorded output would be produced as a result of selecting the second verification level as opposed to selecting a first verification level, which is required by the claims. Instead, attention is merely directed to asserting one would be motivated to eliminate the recorded output.

In regard to the foregoing, it is noted that the rejection of record is flawed inasmuch as it acknowledges that "selection of the second verification level causes the one or more test cases to invoke an insert record object and to additionally verify through recorded output that a record corresponding to the insert record object was properly inserted and present," but fails to identify any art or teaching that purports to teach such a limitation.

In view of the foregoing, it is not necessary to further amend the claims. Nevertheless, the claims have been further amended to add more clarity to the claim language by stating that

"the second verification level, which is distinguished from the first verification level, causes the one or more test cases to be run with different instructions and to invoke the insert record object and to additionally verify through recorded output that a record corresponding to the insert record object was properly inserted and presented when the one or more test cases corresponding to the second verification level are run, and such that the recorded output which is produced in response to the one or more test cases being run following the selection of the second verification level is refrained from being produced in response to the one or more test cases being run following the selection of the first verification level."

These amendments help clarify the distinction between the different verification levels even more.

Amendments have also been made to claims 15, 16 and 44 to fix minor inconsistencies in the claim dependencies and to omit language that was not necessary.

In view of the foregoing, Applicant respectfully submits that the other rejections to the claims are now moot and do not, therefore, need to be addressed individually at this time. It will be appreciated, however, that this should not be construed as Applicant acquiescing to any of the purported teachings or assertions made in the last action regarding the cited art or the pending application, including any official notice.[3] For example, Applicant respectfully traverses at least the rejections of claims 42-44. In rejecting claim 44 it is essentially asserted that the cited art discloses the running of different types of tests run in various different iterations and combinations and that the tests can be updated. However, this assertion is quite different than teaching or suggesting that upon detecting an adverse result from a group of tests run together that a plurality of corresponding test cases within the test group will be isolated and run individually.

With regard to claim 42 it is stated that Ruffolo teaches the building of different verification level test items. It is then summarily stated that this would make it obvious to define

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[3] Instead, Applicant reserves the right to challenge any of the purported teachings or assertions made in the last action at any appropriate time in the future, should the need arise. Furthermore, to the extent that the Examiner has relied on any Official Notice, explicitly or implicitly, Applicant specifically requests that the Examiner provide references supporting the teachings officially noticed, as well as the required motivation or suggestion to combine the relied upon notice with the other art of record. Furthermore, although the prior art status of the cited art is not being challenged at this time, Applicant reserves the right to challenge the prior art status of the cited art at any appropriate time, should it arise. Accordingly, any arguments and amendments made herein should not be construed as acquiescing to any prior art status of the cited art.

verification settings to include "a single time insertion" test. Applicant disagrees and traverses the implied assumption that disclosure enabling different verification levels to be created makes it obvious to create a particular verification level having particular characteristics that are not disclosed by the cited art. The same analysis is also true of claim 43(which requires verification that a record is inserted without overwriting another record).

With specific regard to claim 43, however, the inadequacy of the rejection is even more apparent since the rejection to claim 43 does not even address the recited limitation regarding the 'overwriting of another record.' Instead, the rejection to claim 43 again merely states that the verification level can be customized to include "just testing a single time insertion." It is also stated that one would be motivated to do this to customize the test case for the project as suggested by Johnson. However, it is unclear how Johnson teaches of customizing a test case or project to verify a 'single time insertion' or the 'avoidance of overwriting another record,' as claimed.

For at least the foregoing reasons, Applicant respectfully submits that the pending claims are allowable over the cited art of record. In the event that the Examiner finds remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney at 801-533-9800.

Dated this 17th day of April, 2008.

Respectfully submitted,

RICK D. NYDEGGER
Registration No. 28,651
JENS C. JENKINS
Registration No. 44,803
Attorneys for Applicant
Customer No. 47973

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AHY0000007507V001